IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3365 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DILUBHA JILUBHA

Versus

DISTRICT SUPERINTENDENT OF POLICE

Appearance:

MR ANANT S DAVE for Petitioner

MR MUKESH PATEL, AGP for Respondents

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 16/06/2001

ORAL JUDGEMENT

1. Petitioner by way of this petition has challenged the order of respondent No.1 recorded on 2nd of June, 1988, adjusting his period of suspension against leave which were in the credit of the petitioner. Facts go to show that the present petitioner serving as Armed Police Constable in Police Department was charged in a criminal

prosecution u/s 332, 506(2) and 504 and 114 of IPC. This charge sheet was filed before the Judicial Magistrate, First Class at Surendranagar and was recorded as Criminal Case No. 2414 of 1987. Relying on this charge sheet, respondent No.1 suspended the present petitioner from his service vide his order dated 6th July, 1987 contemplating the prosecution and anticipated departmental inquiry, if any. It appears that no departmental inquiry was proceeded with against the petitioner, but, however, the petitioner came to be acquitted by the learned Judicial Magistrate, First Class at Surendranagar from the above charges vide his judgment and order dated 24th of November, 1987. Consequently, the petitioner was reinstated in the service, but however, his period of absence on duty i.e. suspension, was regularised by respondent No.1 i.e. District Police Superintendent, vide his Order dated 2nd June, 1988 and thereby respondent No.1 adjusted all the leave in the credit of the petitioner against the period of suspension. The petitioner, therefore, has approached this Court for a writ or direction in the nature of mandamus for setting and quashing the order of respondent No.1 recorded on 2nd June, 1988 adjusting the suspension period of the petitioner against the leave at the credit of the petitioner.

2. Learned Advocate Mr. Anant S. Dave for the petitioner and learned AGP Mr. Mukesh Patel for the respondents were heard.

3. On behalf of the petitioner, various contentions were made for the submission that the order impugned was totally illegal, arbitrary and contrary to the provision of the Bombay Civil Services Rules. While learned AGP Mr. Mukesh Patel has contended that the authority concerned has exercised power u/r 152 of the Bombay Civil Services Rules, which could not have been challenged by the petitioner by this petition.

4. From the rival contentions, the uncontroverted fact which emerges is while regularising the period of absence of the petitioner i.e. suspension, considerable leave are adjusted against his absence from duty. Undoubtedly, this would result in considerable loss financially and other wise also to the petitioner. One cannot question the exercise of power, by the competent authority u/r 152 of the Bombay Civil Services Rules, but at the same time, when orders are likely to affect the delinquent prejudicially, an opportunity of being heard should be afforded to the delinquent concerned. The principle of natural justice cannot be overlooked. Any

orders after hearing the petitioner may be passed by the competent authority u/r 152 of the Bombay Civil Services Rules, according to law. On behalf of the petitioner, much stress is put on the point that before passing the impugned order by the competent authority, the petitioner has not been given an opportunity of being heard and to make his submission for due consideration of competent authority.

5. In the matter of BHARUBHA JHALUBHA vs. D.S.P. in Spl. C.A. No. 3368 of 1988, vide order dated 11th August, 2000, in identical circumstances, this court has taken the view that delinquent in such circumstances must be afforded an opportunity of being heard.

6. In this view of the matter, the petitioner succeeds on this ground that he has not been afforded an opportunity of being heard before passing the impugned order. Consequently, the impugned order at Annexure-A dated 2nd of June, 1988 recorded by respondent No.1 is hereby quashed and set aside. Matter is sent back to respondent No.1 to pass fresh order according to law after affording opportunity of being heard to the petitioner. Rule is made absolute accordingly with no order as to costs.

(J.R. Vora, J.)

p.n.nair